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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Robert James GERNDT  
John Joseph SAYOVITZ

Serial No.: 09/240,524

Group No.: 3743

Appeal No.: 2004-0342

Examiner: C. Atkinson

Filing Date: 29 January 1999

Title: FLUID DISTRIBUTION SYSTEM FOR  
THERMAL TRANSFER ROLLERS

**RENEWED  
PETITION TO REVIVE UNINTENTIONALLY ABANDONED  
APPLICATION UNDER 37 C.F.R. § 1.137(b)**

Mail Stop PETITION  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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## OFFICE OF PETITIONS

Ladies and Gentlemen:

In response to the correspondence from the Office of Petitions mailed on 11 January 2005, Applicants renew their petition to the Commissioner to revive the

I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being transmitted by facsimile to the United States Patent and Trademark Office at (703) 872-9306 on

21 January 200521 January 05Eric Kuschka

Signature

KCC-1058-CPA

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unintentionally abandoned application. Applicants indicate below facts in support of the petition.

#### **Appeal Brief and Appeal Brief Fee**

With the Provisional Petition to Revive Unintentionally Abandoned Application Under 37 C.F.R. § 1.137(b) filed on 22 March 2004, Applicants enclosed therewith three (3) true copies of the Appeal Brief Under 37 C.F.R. 1.192, as originally filed on 16 August 2002. Further, the undersigned attorney authorized the Commissioner to charge any fee deficiency for the Appeal Brief fee to Deposit Account No. 19-3550. In the Office of Petitions correspondence it is noted that such fee is unnecessary.

#### **Petition Fee**

Because Applicants filed the Provisional Petition To Revive Unintentionally Abandoned Application in anticipation that the Examiner will mail an Office Communication alleging that the subject U.S. Patent Application is abandoned for failure to timely pay the appeal brief fee, Applicants did not enclose with the provisional petition a check for the Petition Fee under 37 C.F.R. § 1.17(m). If it is determined by the Examiner that a Petition Fee of \$1,500.00 under 37 C.F.R. § 1.17(m) is required, the Commissioner is authorized to charge the Petition Fee of

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\$1,500.00, or any deficiency in a previously paid Petition Fee under 37 C.F.R. § 1.17(m), to Deposit Account 19-3550. A duplicate of this Petition is enclosed.

**Terminal Disclaimer**

Enclosed with this Renewed Petition to Revive Unintentionally Abandoned Application Under 37 C.F.R. § 1.137(b) is a Terminal Disclaimer disclaiming a terminal part of the term of any patent granted the subject application equivalent to the lesser of: (a) the period of abandonment of the application; and (b) the period extending beyond twenty years from the date on which the subject application was filed in the United States. The undersigned is an attorney of record.

The Commissioner is authorized to charge the Terminal Disclaimer Fee of \$130.00 and/or any deficiency in the Terminal Disclaimer Fee to Deposit Account 19-3550.

**Statement**

The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional. The following facts support Applicants' statement.

1. On 22 March 2002, Examiner Atkinson mailed a final Office Action, in which Claims 1-25 were rejected. (Paper No. 27)

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2. On 22 May 2002, Applicants filed a Request for Reconsideration in response to the final Office Action mailed 22 March 2002. (Paper No. 28)

3. On 10 June 2002, Examiner Atkinson mailed an Office Communication, including an Advisory Action indicating that Applicants' reply to the final Office Action has been considered but is not deemed to place the application in condition for allowance. (Paper No. 29)

4. On 24 June 2002, Applicants filed a Notice of Appeal from the Examiner to the Board of Patent Appeals and Interferences, wherein the Commissioner was authorized to charge *any deficiencies in fees* which may be required, or credit any overpayment to Deposit Account No. 19-3550. (Paper No. 30)

5. On 16 August 2002, Applicants filed with the U.S. Patent and Trademark Office an Appeal Brief under 37 C.F.R. § 1.192. (Paper No. 31)

6. On 05 November 2002, Examiner Atkinson filed with the Board of Patent Appeals and Interferences an Examiner's Answer in response to Applicants' Appeal Brief. (Paper No. 32)

7. On 19 December 2002, Applicants filed with the U.S. Patent and Trademark Office a Reply Brief under 37 C.F.R. § 1.193. (Paper No. 33)

8. On 14 January 2003, Examiner Atkinson mailed an Office Communication indicating that Applicants' Reply Brief filed on 26 December 2002

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has been entered and considered, and that the application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal. (Paper No. 34)

9. On 11 March 2003, the Board of Patent Appeals and Interferences mailed an Order Returning Undocketed Appeal To Examiner, stating that there is no indication that the Appeal Brief fee had been received and/or applied and that the Board was able to locate only one copy of the Appeal Brief instead of the required three copies pursuant under 37 C.F.R. § 1.192. (Paper No. 35)

10. On 31 March 2003, Examiner Atkinson mailed an Office Communication entitled "Response to Non-Responsive Brief" alleging that the Appeal Brief and Notice of Appeal are non-responsive to the prior Office Action because no Appeal Brief fee has been paid and there is only one copy of the Appeal Brief. Examiner Atkinson indicated that "Since the response appears to be *bona fide*, but through an apparent oversight or inadvertence failed to provide a complete response, applicant is required to complete the response within a time limit of one month from the date of this letter or within the time remaining in the response period of the last Office action, whichever is longer." (Paper No. 36)

11. On 22 April 2003, Applicants filed with the U.S. Patent and Trademark Office a Response To The Response To Non-Responsive Brief, including three true copies of the Appeal Brief Under 37 C.F.R. 1.192, as originally filed on 16

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August 2002, and a check in the amount of \$320.00 to cover the Appeal Brief fee, authorizing the Commissioner to charge any deficiency or to credit any overpayment to Deposit Account No. 19-3550. (Paper No. 37)

12. On 09 July 2003, Examiner Atkinson mailed an Office Communication indicating that "The reply brief filed 5/1/2003 has corrected the non-responsiveness and has been entered and considered. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal." (Paper No. 38)

13. On 21 January 2004, the Board of Patent Appeals and Interferences mailed a Docketing Notice indicating that "Application 09/240,524 was received from the Technology Center at the Board on December 8, 2003 and has been assigned Appeal No: 2004-0342." (Paper No. 39)

14. On 11 March 2004, The Board of Patent Appeals and Interferences mailed an Opinion in which the Board remanded "this application to the examiner to determine if the appeal should be dismissed for failure to timely pay the appeal fee, and if so, to determine if this application is abandoned." (Paper No. 40)

15. On 15 March 2004, Applicants received the Opinion from the Board of Patent Appeals and Interferences.

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16. On 22 March 2004, in response to the Opinion of the Board of Patent Appeals and Interferences, Applicants filed with the U.S. Patent and Trademark Office a Request to the Examiner to Resubmit Application to the Board of Patent Appeals and Interferences for Decision on Appeal. The Request included a Provisional Petition to Revive Unintentionally Abandoned Application Under 37 C.F.R. § 1.137(b).

17. On 11 January 2005, the U.S. Patent and Trademark Office, Office of Petitions mailed a correspondence dismissing the Provisional Petition to Revive Unintentionally Abandoned Application Under 37 C.F.R. § 1.137(b) filed on 22 March 2004 for failure to include a terminal disclaimer and a required terminal disclaimer fee.

18. On 18 January 2005, the undersigned discussed with Ms. Sherry D. Brinkley, Petitions Examiner, the items required for a grantable petition. Ms. Brinkley verified that only a terminal disclaimer (and fee as set forth in 37 C.F.R. 1.20(d)) is required in this Renewed Petition to Revive Unintentionally Abandoned Application Under 37 C.F.R. § 1.137(b).

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### Conclusion

Applicants respectfully request that this renewed petition be granted.

The Commissioner is authorized to charge the Petition Fee of \$1,500.00 under 37 C.F.R. 1.17(m), and/or any fee deficiency, to Deposit Account 19-3550. The Commissioner is also authorized to charge the Terminal Disclaimer Fee of \$130.00 under 37 C.F.R. 1.20(d), and any fee deficiency, to Deposit Account 19-3550. Should the Commissioner require additional information regarding whether the delay was unintentional, the undersigned attorney can be contacted at (847) 490.1400.

Respectfully submitted,



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